

1 JOHN J. FRANKOVICH (NSBN 667)  
2 MIRANDA DU (NSBN 5288)  
3 McDONALD CARANO WILSON LLP  
4 100 West Liberty Street, 10th Floor  
5 Reno, Nevada 89505-2670  
6 Telephone: (775) 788-2000  
7 Facsimile: (775) 788-2020  
8 E-Mail: [jfrankovich@mcdonaldcarano.com](mailto:jfrankovich@mcdonaldcarano.com)  
9 and [mdu@mcdonaldcarano.com](mailto:mdu@mcdonaldcarano.com)

10 CEDRIC C. CHAO (CA SBN 76045)  
11 WILLIAM L. STERN (CA SBN 96105)  
12 JAMES M. SCHURZ (CA SBN 145874)  
13 MORRISON & FOERSTER LLP  
14 425 Market Street  
15 San Francisco, California 94105-2482  
16 Telephone: (415) 268-7000  
17 Facsimile: (415) 268-7522  
18 E-Mail: [cchao@mofo.com](mailto:cchao@mofo.com)  
19 and [wstern@mofo.com](mailto:wstern@mofo.com)  
20 and [JSchurz@mofo.com](mailto:JSchurz@mofo.com)

21 [Additional Counsel on Signature Page]

22 Attorneys for Plaintiff QUIXTAR INC.

23 UNITED STATES DISTRICT COURT

24 DISTRICT OF NEVADA

25 QUIXTAR INC.,

26 Case No. 3:07-cv-00505

27 Plaintiff,

28 AMENDED PROTECTIVE ORDER

v.

29 SIGNATURE MANAGEMENT TEAM, LLC  
30 d/b/a TEAM,

31 Defendant.

32 The parties and their undersigned counsel believe that certain materials produced by the  
33 parties during discovery may be so highly confidential and competitively sensitive that it is  
34 necessary to restrict disclosure and use of such materials as among the parties and/or their  
35 counsel as well as with respect to third parties.

36

1           IT IS HEREBY ORDERED, all documents and information produced in this case are  
2 subject to the following protections:

3           I.       SCOPE:

4           A.       This Protective Order shall apply to all information, documents and things  
5 within the scope of discovery of this action that are in the custody or possession of the Parties  
6 which is properly designated as "Confidential Material" pursuant to the following provisions by  
7 the Party producing the information including, but not limited to, documents and things  
8 responsive to requests for production of documents, responses to written interrogatories,  
9 responses to requests for admission, testimony adduced at depositions, and hearing or trial  
10 transcripts.

11           The Parties shall label or mark documents and things that constitute or contain  
12 Confidential Material with the legend "CONFIDENTIAL MATERIAL" or  
13 "CONFIDENTIAL". Documents and things that constitute or contain Confidential Material  
14 shall be labeled or marked with the appropriate legend when the document or thing is produced  
15 to the Party or Parties seeking discovery. The designations of "CONFIDENTIAL MATERIAL"  
16 or "CONFIDENTIAL" by a Party constitutes the representation of the Party that it reasonably  
17 and in good faith believes that the designated material constitutes or discloses one of the  
18 following:

- 19           a)       Files of specific Amway and Quixtar "dispute resolution"  
20                   cases including formal and informal conciliation and arbitration;
- 21           b)       Sensitive personal, business or commercial information  
22                   that is not publicly available;
- 23           c)       Information received by a Party from a third party subject  
24                   to a protective order or under a bona fide obligation of confidentiality;  
25                   and
- 26           d)       Trade secrets, know-how, proprietary data or commercial  
27                   information (including, but not limited to, customer and supplier lists,  
28                   and pricing information) within the meaning of Rule 26(c)(1)(G) that has  
                 previously been maintained in confidence, or, if newly created, will be  
                 maintained in confidence.

27           Documents and things produced without a legend designating the material confidential  
28 shall not be Confidential Material subject to this Protective Order unless agreed by all Parties

1 or ordered by this Court, or otherwise designated confidential in accordance with the provisions  
2 of Paragraph A of this Protective Order. Confidential Material does not include information,  
3 documents, or things obtained in this action that are (a) in the receiving party's possession or  
4 (b) publicly available. Furthermore, the disclosing party may designate as "Attorneys' Eyes  
5 Only" (hereinafter "Attorneys' Eyes Only") information believed in good faith to contain or  
6 constitute any of the following types of non-public information:

7           a.     Strategic plans and internal and external analyses of pricing or sales  
8 performance of any party or any affiliate of a party; or

9           b.     Financial data, records, and reports, and tax returns of any party; or

10           c.     Line of Sponsorship compilations or lists, in whole or in part, except the  
11 identities of witnesses expected to testify or identities already known to the receiving party;

12           The parties agree that the following limitations shall be imposed on the disclosure of  
13 Confidential Material and/or Attorneys' Eyes Only Information.

14           B.     Confidential Material and/or Attorneys' Eyes Only Information received by any  
15 person or party entitled under the terms of this Order to access such Confidential Material  
16 and/or Attorneys' Eyes Only Information shall not be disclosed and shall not be used for any  
17 purpose other than prosecution or defense of this action; provided further that specified  
18 categories of Confidential Material and/or Attorneys' Eyes Only Information may be used in  
19 the following related arbitration or litigation proceedings provided that a confidentiality order  
20 substantially similar to this one applies:

- 21           • *Quixtar v. Woodward et al.*, JAMS No. 1100052219.  
22           • *Quixtar v. Orrin Woodward et al.*, No. 07-084313-CK (Kent County, Michigan  
23 State Court).

24           In the event any information subject to this Order is included with, or the contents  
25 thereof; are in any way disclosed in any pleading, motion, deposition, transcript, or other paper  
26 filed with a court of law, such Confidential Material and/or Attorneys' Eyes Only Information  
27 shall be filed under seal in accordance with the local rules of the court.

28

1           C. Nothing contained in this Order shall be construed to affect or govern the scope  
 2 of discovery and/or the admissibility of evidence in this action, or to preclude any party from  
 3 moving the Court for a further order defining the scope of discovery available in the action  
 4 and/or the admissibility of evidence in this action.

5           D. Nothing contained in this Order shall be construed to require production or  
 6 disclosure of any Confidential Material and/or Attorneys' Eyes Only Information deemed by  
 7 counsel for the party possessing such material to be protected from disclosure by either the  
 8 attorney-client or the attorney-work product privileges, so long as the withheld materials are  
 9 adequately identified and described by the party asserting the privilege(s).

10          E. The inadvertent production of privileged or work product documents will not  
 11 waive the privilege or work product protection. Upon notice by the disclosing party and upon a  
 12 showing of privilege, together with a showing of inadvertent production, the non-producing  
 13 party shall immediately return the originals and all copies of the privileged documents or  
 14 things, unless the non-producing party disputes the producing party's showing of privilege or  
 15 inadvertent production. If the non-producing party disputes the producing party's showing, the  
 16 non-producing party may retain one copy of the documents or things, pending hearing. Within  
 17 10 days after receipt of the producing party's notice, the non-producing party that disputes the  
 18 showing of privilege must file a motion with the Court to compel production of the documents  
 19 or things. The producing party shall have the burden of showing privilege and inadvertence.  
 20 From receipt of the producing party's notice, and until the Court resolves any such motion, the  
 21 non producing party shall maintain the documents or things in a manner that they are available  
 22 only to counsel, and to the exclusion of the parties.

23          II. TERMS OF PROHIBITION:

24          F. Confidential Material shall be revealed only to (1) the Court; (2) officers,  
 25 directors, and employees of a party in this litigation; (3) counsel for the parties in this action  
 26 and designated in house counsel who have signed this Order;<sup>1</sup> (4) such counsel's paralegal,

27  
 28 <sup>1</sup> The Confidential Material or Attorneys' Eyes Only Information shall not be disclosed to or discussed with any  
 Shughart Thompson lawyer or employee who is working on the *Nitro Distributing et al. v. Alticor et al.* federal  
 Continued . . .

1 secretarial and clerical staff (including shorthand reporters) assisting such counsel, and  
 2 computer technicians, (5) testifying experts or non-testifying consultants who are retained by  
 3 such counsel to assist in this arbitration; and (6) any witness who testifies in a deposition or at  
 4 the hearing; provided that the witness may only see Confidential Material directly pertinent to  
 5 the witness' testimony. However, absent written agreement from the party producing the  
 6 Confidential Material or order from the Court, no party receiving Confidential Material from  
 7 another party may disclose the Confidential Material to any expert witness or consultant who is  
 8 employed by, or affiliated with, a competitor of the producing party, including (for purposes of  
 9 this protective order only) any other direct sales program using a multilevel or "network"  
 10 marketing structure or any other enterprise that markets, through independent distributors,  
 11 products or services functionally interchangeable with those offered or marketed by Quixtar or  
 12 TEAM, unless the party seeking to disclose gives the owner of the Confidential Material ten  
 13 days' written notice identifying the Confidential Material to be disclosed and a general  
 14 description of the competitor by which the expert witness is employed or affiliated.  
 15 "Affiliated" means that the expert witness has substantial ongoing managerial responsibilities  
 16 for the competitor, or direct or indirect control of the competitor. A competitor's outside  
 17 accounting firms and auditors, law firms, construction general contractors, etc. are not  
 18 "affiliated" within the meaning of this paragraph.

19       G.     A document designated as Attorneys' Eyes Only Information and stamped  
 20 "Attorneys" Eyes Only" and the information contained therein shall be revealed only to (1) the  
 21 Court; (2) counsel representing the parties in this action and designated in house counsel who  
 22 have signed this Order; (3) such counsel's paralegal, secretarial and clerical staff (including  
 23 shorthand reporters) assisting such counsel and computer technicians; (4) expert witnesses and  
 24 non-testifying consultants who are retained by such counsel (and excluding any expert witness  
 25 or consultant who is employed by, or affiliated with, a competitor of the producing party); and  
 26 (5) a witness who testifies in a deposition or at the hearing, provided that the witness may only

27  
 28 lawsuit, the related state court lawsuits, or the arbitrations and lawsuits involving Ken Stewart, Brig and Lita Hart  
 or their Quixtar distributorships (collectively "the Nitro litigation").

1 see "Attorney's Eyes Only" information directly pertinent to the witness' testimony, and may  
 2 not make any copies or notes. "Competitor" and "Affiliated" mean the same as they do in  
 3 Paragraph G above. A party may challenge an "Attorneys' Eyes Only" designation, and if the  
 4 designating party does not withdraw the designation within 3 days, the parties will seek a ruling  
 5 from the Court at the Court's earliest convenience. The prevailing party in such a challenge  
 6 shall be entitled to attorneys' fees to the extent the Court believes such fee-shifting is  
 7 appropriate in the particular situation. If the Court sustains the challenge, the document or  
 8 information will not be treated as "Attorneys' Eyes Only."

9           H. With the exception of: (1) the Court; (2) counsel representing the parties in this  
 10 action and designated in house counsel; and/or (3) paralegals or secretarial employees under the  
 11 direct supervision of such counsel, each person who reviews or inspects Confidential Material  
 12 and/or Attorneys' Eyes Only Information shall sign a copy of the attached Affidavit. Each  
 13 person's signature shall be notarized by an officer authorized to administer oaths. No person  
 14 entitled to access to Confidential Material and/or Attorneys' Eyes Only Information shall  
 15 disclose or discuss the existence or contents of any such materials with any other individual, or  
 16 entity, except those individuals who are also permitted by this Order to view, inspect, or receive  
 17 the Confidential Material and/or Attorneys' Eyes Only Information.

18           I. Counsel for the parties shall maintain a list of all persons (with the exception of:  
 19 (1) the Court; (2) counsel representing the parties in this action and designated in house counsel  
 20 who have signed this Order; and (3) paralegals or secretarial employees under the direct  
 21 supervision of such counsel) who inspect or review Confidential Material or who receive any  
 22 copies or any version of Confidential Material and will make such a list available to counsel for  
 23 the other parties within thirty (30) days of the conclusion of this action or any post-action  
 24 proceeding in a court of law, if any. The parties and their counsel shall also certify to the Court  
 25 their compliance with this Order at the conclusion of this action.

26           J. If Confidential Material and/or Attorneys' Eyes Only Information is disclosed to  
 27 or comes into the possession of any person other than in the manner authorized by this Order,  
 28 any party becoming aware of such disclosure shall immediately inform the party which

1 originally produced the Confidential Material and/or Attorneys' Eyes Only Information of all  
2 pertinent facts relating to the unauthorized disclosure and shall instruct each unauthorized  
3 person to treat such information as confidential in accordance with the terms of the Order and  
4 demand that it be returned immediately.

5       K. If a party receives a subpoena or other legal process which calls for disclosure of  
6 any materials designated as Confidential Material and/or Attorneys' Eyes Only Information by  
7 another party, or for disclosure of any information contained in such Confidential Material  
8 and/or Attorneys' Eyes Only Information, the party receiving the subpoena shall give prompt  
9 written notice, by fax and first-class mail, of such subpoena or other legal process to counsel  
10 for the party who designated the Confidential Material and/or Attorneys' Eyes Only  
11 Information in question, and shall cooperate in any reasonable and legally appropriate efforts to  
12 oppose or otherwise limit production or disclosure of such Confidential Material and/or  
13 Attorneys' Eyes Only Information in response to the subpoena or legal process.

14       **III. RETURN OF DOCUMENTS AND INFORMATION:**

15       L. At the conclusion of this action, or, if Confidential Material or Attorneys' Eyes  
16 Only Information is being used in a related arbitration or litigation (as provided in paragraph B)  
17 at the conclusion of that other arbitration or litigation, all documents and materials subject to  
18 this Order, (including all copies, abstracts, summaries thereof; and all documents which refer  
19 to, recount, or depict Confidential Material and/or Attorneys' Eyes Only Information), shall be  
20 destroyed or returned to counsel for the producing party within thirty (30) days, accompanied  
21 by an affidavit with an affirmation certifying that all material has been destroyed or returned  
22 and protected in accordance with this Order.

23       **IV. APPLICATION TO THE COURT FOR FURTHER RELIEF:**

24       M. Nothing herein shall be construed to preclude or limit any party from opposing  
25 any discovery on any grounds which would otherwise be available. Nothing in this Order shall  
26 be deemed to preclude any party from seeking or obtaining, on the appropriate showing,  
27 additional protection with respect to the confidentiality of documents or information.

28

1           **V. ADMISSION INTO EVIDENCE:**

2           N. The terms of this Order shall not be construed as a limitation upon the right of  
3 any party to offer into evidence in this action any documents or information covered by this  
4 Order. Production of the documents or information accompanied by this Order does not  
5 constitute a waiver to objection to admissibility.

6           **VI. MODIFICATION**

7           O. This Protective Order may not be modified except in writing signed by all  
8 parties and approved by the Court.

9           DATED this \_\_\_\_ day of May 2008.

10          McDonald Carano Wilson LLP

11          By: /s/Miranda Du  
12                   JOHN FRANKOVICH  
13                   MIRANDA DU  
14                   100 W. Liberty Street, 10th Floor  
15                   P.O. Box 2670  
16                   Reno, NV 89505-2670

17          CEDRIC C. CHAO  
18          WILLIAM L. STERN  
19          JAMES M. SCHURZ  
20          MORRISON & FOERSTER LLP  
21          425 Market Street  
22          San Francisco, California 94105-2482

23          Attorneys for Plaintiff Quixtar Inc.

24          By: M. Woods  
25                   SHARON M. WOODS  
26                   Barris, Sott, Denn & Drinker, P.L.L.C.  
27                   211 West Fort Street, 15th Floor  
28                   Detroit, MI 48226

29          KIRK B. LENHARD  
30          ADAM K. BULT  
31          JONES VARGAS  
32          3773 Howard Hughes Parkway  
33          Third Floor South Las Vegas, NV 89169

34          WM. CHARLES BUNDREN  
35          WM. CHARLES BUNDREN &  
36          ASSOCIATES  
37          2591 Dallas Pkwy, Ste. 300  
38          Frisco, TX 7503

39          Attorneys for Defendant Signature TEAM, Inc.

40          IT IS SO ORDERED

41          DATED this 7<sup>th</sup> day of May, 2008



42          Hon. Robert A. McQuaid, Jr.  
43          Magistrate Judge, District of Nevada

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

QUIXTAR INC.,

**Plaintiff,**

v.

**SIGNATURE MANAGEMENT TEAM, LLC  
d/b/a TEAM,**

**Defendant.**

Case No. 3:07-cv-00505

**UNDERTAKING OF  
PROTECTIVE ORDER RE**

I, being duly sworn, state that:

1. My present address is \_\_\_\_\_.

16 My present employer is \_\_\_\_\_,

17 and the address of my present employer is \_\_\_\_\_.

18 2. I have received a copy of the Protective Order in this action. I have carefully

18       2. I have received a copy of the Protective Order in this action. I have carefully  
19 read and understand the provisions of the Protective Order.

20       3. I will comply with all of the provisions of the Protective Order. I will hold in  
21 confidence, will not disclose to anyone not qualified under the Protective Order, and will use  
22 only for purposes of the above entitled action, any CONFIDENTIAL INFORMATION,  
23 including the substance and any copy, summary, abstract, excerpt, index or description of such  
24 material that is disclosed to me.

25           4. I will return all CONFIDENTIAL INFORMATION that comes into my  
26 possession, and all documents and things that I have prepared relating thereto, to counsel for  
27 the Party by whom I am employed or retained or from whom I received such material when  
28 requested to do so.

1       5. I understand that if I violate the provisions of the Protective Order, I will be  
2 subject to sanctions by the Court, and that the producing party may assert other remedies  
3 against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of  
4 the Protective Order in this action.

5

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Sworn to and subscribed before me  
8 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

9

10 Notary Public

11 My commission expires \_\_\_\_\_

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